UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.,	:	NO. 1:01-CV-00528
Plaintiffs,	:	
v.	:	**ORDER**
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.,	:	
Defendants.	:	

This matter is before the Court on Plaintiffs' Motion to Consolidate and Join Class Action Proceedings (doc. 79); the Responses in Opposition by Defendant Jonathan Tobias (doc. 86), by Defendant Carl L. Parrott, Jr. (doc. 87), by the Hamilton County Defendants (doc. 88), by Defendant Thomas Condon (doc. 89); and Plaintiffs' Reply (doc. 94). The Court shall also consider Plaintiffs' Motion for Extension of Time to File Memorandum in Opposition to Defendants' Motion for Summary Judgment (doc. 95).

Plaintiffs presently move the Court for an Order consolidating this action with the pending consolidated class action proceedings in Chesher v. Neyer, No. 1:01-CV-00566 (doc. 79). Plaintiffs argue that having conducted discovery, they have made the determination that it would be advantageous to all parties and the Court for this action to be consolidated, and for Plaintiffs to be permitted to opt in to the Chesher class action

(Id.). Plaintiffs state that judicial economy as well as the consolidation of resources on the part of all involved support Plaintiffs' request (Id.).

All of the Defendants disagree with Plaintiffs' position, and oppose Plaintiffs' Motion. Defendant Tobias reminds the Court that some fifteen months ago the Hamilton County Defendants filed a motion to consolidate this action, which Plaintiffs opposed (doc. 86). Tobias argues that this case is entirely different from Chesher both factually and legally, so that consolidation under Fed. R. Civ. P. 42(a) should be denied (Id.). Tobias specifically argues this case involves a single photograph of a corpse taken by Tobias in the course of his official duties, as opposed to the numerous photographs in Chesher taken by Defendant Thomas Condon before and during various autopsies (Id.). Similarly, Tobias argues the legal issue in this case is different than that in Chesher, as this case squarely addresses whether Tobias, an employee of the Coroner's office acting within the scope of his official duties, violated Plaintiffs' constitutional rights by taking a photo destined for the Coroner's Office's official files (Id.).

Defendant Parrott argues that it would be unfair and prejudicial at this point in the proceedings, after Defendants have filed motions for summary judgment, to allow Plaintiffs to consolidate and join the Chesher class action proceedings (doc.

87). Parrott cites Plaintiffs' October 24, 2002 pleading in which Plaintiffs argued that the Chesher plaintiffs seek dissimilar relief and have different interests, such that "the only thing in common between [Chesher] and this action is that one of the decedents of whom photographs were released by the morgue is the same as the one in this action. However, that is where the commonality starts and ends" (Id.). Parrott argues that as a result of Plaintiffs' refusal to consolidate this action earlier, Defendants were forced to attend duplicative depositions that had already been taken in the Chesher case (Id.). Finally, Parrott argues that Plaintiffs do not fit within the Chesher class definition, as discovery in this case has revealed that the photographs of their decedent were taken for a proper government purpose in the regular course of business (Id.).

The Hamilton County Defendants argue that the Court should render a decision on their motion for summary judgment prior to considering whether consolidation is warranted (doc. 88). Hamilton County argues that when viewed in the light of the procedural posture in this case, Plaintiffs' current motion is nothing more than a last-minute attempt to save an otherwise floundering case (Id.). Hamilton County further argues that if the Court grants Plaintiffs' motion, Plaintiffs should be required to reimburse Defendants for the expenses incurred in defending this separate but "duplicative" action (Id.).

Defendant Thomas Condon echoes the arguments of his co-

Defendants (doc. 89). Condon similarly requests that the Court either delay ruling on the consolidation motion until after it has ruled on the motions for summary judgment or deny Plaintiffs' Motion to Consolidate outright (Id.).

Plaintiffs' Reply argues that their prior opposition to consolidation was prior to the completion of discovery (doc. 94). Now that discovery is complete, they argue, it has become clear that their interests align with those of the class certified by this Court in Chesher (Id.). Plaintiffs repeat, without precision, that judicial economy and the consolidation of resources on the part of all the parties support their request (Id.).

Plaintiffs' Motion for Consolidation is governed by Fed. R. Civ. P. 42(a) which states:

> Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Having reviewed this matter, the Court finds Defendants' position well-taken. Consolidating this case with Chesher would only create unnecessary delay for the resolution of this case, as this case shall be ready for trial on July 6, 2004, and the Defendants, who have dutifully cooperated in discovery, need not wait any longer for a trial of this matter. Moreover, the Court finds well-taken the Defendants' arguments that the specific legal question at issue in this case, is whether Dr. Tobias' death scene photograph of Mr.

Melton, taken in the scope of official business, violated Plaintiffs' rights. Such question does not fall clearly within the class definition of the Chesher case, which explicitly excludes those deceased whose remains were accessed, viewed, manipulated, or photographed for a proper government purpose. Plaintiffs have not demonstrated how their prior arguments against consolidation have been rendered meritless by discovery, nor have Plaintiffs explained how judicial economy and the consolidation of resources on the part of all the parties support their request. Moreover Defendants have incurred expenses in discovery that at this point of the proceedings cannot be avoided by consolidation. The Court therefore does not find that Plaintiffs' Motion should be granted under Fed. R. Civ. P. 42(a).

Plaintiffs also filed a Motion for Extension of Time to File Memorandum in Opposition to Defendants' Motions for Summary Judgment (doc. 95). Plaintiffs essentially indicate that they desire an extension until the Court would rule on consolidation, so as to allow them to determine the course of this litigation (Id.). As the Court has denied consolidation, the Court finds that Plaintiffs should file their Opposition to Defendants' Motion for Summary Judgment forthwith.

Accordingly, for the reasons articulated herein, the Court DENIES Plaintiffs' Motion to Consolidate and Join Class Action Proceedings (doc. 79), but GRANTS Plaintiffs' Motion for Extension of Time to File Memorandum in Opposition to Defendants'

Motion for Summary Judgment to the extent that the Court ORDERS such Memorandum to be filed on or before May 26, 2004. Defendants shall file their Replies in accordance with the Rules.

SO ORDERED.

Dated: May 12, 2004

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge